There is, however, another defence to the plaintiff's claim — namely that he has no title to the property and thus cannot claim possession. It is not disputed that he has an agreement under which he may ultimately acquire a lease and thus he may have an equitable title to the property — but in the present situation, it is argued, he can no more call for a lease than can the defendants; that he is thus no more than a licensee himself (though possibly with an equitable interest) and the defendants in turn are no more than his licensees. It follows, therefore, that the relationship of landlord and tenant does not exist between them; the notice to quit is bad and the plaintiff is not a "landlord" in terms of the Control of Rent Ordinance.

I must confess that this matter has given me much trouble. The authorities quoted are very old and, as was thus to be expected, not fully in point. The conclusion, however, which I have reached is that without involving the doctrine of estoppel (if it applies) it cannot possibly be said that the plaintiff is a landlord in terms of this Ordinance. In my opinion Mr. Gould's point is a good one. In *Yap Chin Min v. Loh Ah Peng*[1] the appellant had an agreement for a lease for five years with an option for a further five years. He was held, however, not to be an "owner" in terms of the previous Control of Rent Ordinance; and the fact that in the new Ordinance the word "landlord" is substituted for "owner" and the plaintiff here may have the possibility of acquiring a longer lease than did the plaintiff in that case, can in no way alter the position. The learned Chief Justice in *Yap's*[1] case admits of the possibility that a person with a lease of say 99 years might be regarded as an "owner" — but that of course, does not arise here since the plaintiff has no lease at all, but merely an agreement for one.

It remains for consideration whether the defendants are estopped from denying that the plaintiff is their landlord. Now in the first place there can be no doubt that throughout the whole history of this affair they knew only too well of his position *viz-a-viz* the Government and at all times the plaintiff has been entitled to rent which, indeed, was increased by the Rent Board following a hearing at which the defendants are said not even to have attended and certainly never suggested that they were not the plaintiff's tenants. No question arises of misrepresentation or fraud and the defendants have made no attempt to explain why over the many years which have passed they have regularly paid rent to the plaintiff which of itself, is *prima facie* evidence of the relation of landlord and tenant between them. In my opinion they must be estopped from denying this relationship and in this respect also, the defendant's case must fail.

There will thus be judgment for the plaintiff in terms of the Statement of Claim with costs.

*Claim allowed.*

Solicitors: *Laycock & Ong; Rodyk & Davidson.*

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## *Re* ONG TIANG SOON DECD.; TAN SWEE NEO & ANOR. v. ONG YAN HO NEO & ANOR.

[O. C. J. (Murray-Aynsley C.J.) July 27, 1954]

[Singapore — Originating Summons No. 46 of 1954]

*Will — Construction — Vesting — Direction to pay at the end of a certain period — Gift of interest in the meantime.*

In this case the testator gave the residue of his property to trustees for conversion and subject thereto to pay the balance of the income, after paying outgoings and certain temporary annuities, for a period of 21 years to three sons named in the will and after the period of 21 years to hold on trust for the same three children both as to capital and income. One of the sons died testate not leaving issue before the expiry of the period of 21 years. The question for determination was whether the interest of the son was vested.

**Held:** the interest of the son was vested and on his death passed to his personal representatives.

*Cases referred to:—*

(1) *Batsford v. Kebbell* (1797), 3 Ves. Jun. 363; 6 R.R. 15; 30 E.R. 1055.

(2) *In re Lodwig* (1916) 2 Ch. 26.

ORIGINATING SUMMONS.

*R. S. Boswell* for the plaintiff.

*J. W. Cashin* for the defendants.

*A. J Braga* for a beneficiary.

*Cur. Adv. Vult.*

**Murray-Aynsley C.J.:** — This Summons concerns a usual type of Chinese will. The testator gave the residue to trustees for conversion and subject thereto to pay the balance of income, after paying outgoings and certain temporary annuities, for a period of 21 years to three sons named in the will and after the period of 21 years to hold on trust for the same three sons both as to capital and income. There is a proviso dealing with the interest of any son who should die leaving issue before the period of 21 years. This has not happened. One of the sons died testate not leaving issue. The question is whether the interest of that son was vested. If the matter were free from authority one would be inclined to think that there could only be an object in postponing enjoyment (where there is no question of a minority) for a period in gross if the shares do not vest in the meantime. If

the shares vest the provision postponing enjoyment becomes more or less nugatory. However, it is impossible to disregard the formidable body of case law. Modern cases are consistent where the postponement is not during the minority of the recipient. In these days I think that *Batsford v. Kebbell*[1], cannot be considered as an authority. Even in the 'minority" cases the older views against vesting no longer prevail (see *In re Lodwig*[2]). I think that the case is at the present time unarguable.

The answer must be that the share of Ong Biow Sim passed to his personal representatives.

Costs as prayed.

*Order accordingly.*

Solicitors: *R. C. H. Lim & Co.; Rodyk & Davidson; Braga & de Souza.*

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## TEOH BENG KIAT v. PUBLIC PROSECUTOR

[A. Cr. J. (Pretheroe J.) December 15, 1954]

[Ipoh — Criminal Appeal No. 61 of 1954]

*Gaming — Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Assisting in carrying on a public lottery — Evidence — Benefit of the doubt.*

The appellant had been charged on three separate counts under s. 4(1)(c) of the Common Gaming Houses Ordinance and had been convicted on all three. The facts briefly were: The appellant went to the Rex Hotel, Ipoh, and was allocated room No. 1. Between the occupation of the room by him and its vacation by the previous occupant it had been swept and tidied and the person who performed these tasks gave evidence to the effect that there was no paper bag in the room when he left it. Later, appellant left the room and proceeded to the lavatory and then to a telephone. While he was so engaged two acquaintances arrived and, as the door was not locked, they entered the room. Soon afterwards appellant returned to the room and almost immediately the Police, acting on information received, appeared and searched it. They found appellant and his two acquaintances also in the room sitting at a table and on the floor near the table was a paper bag. That bag contained a number of slips of paper which were proved to be betting slips.

The learned Magistrate held that the presumption under s. 11 of the Common Gaming Houses Ordinance must operate against the person who was the occupant of the room in question, and as the accused was the registered occupier of the room he found that a *prima facie* case had been established against him.

Counsel for the appellant argued that in the particular circumstances of the case there was no more evidence against the appellant than against the other two occupants of the room.

**Held:** as there appeared to be no evidence to disprove that one of the two acquaintances of the appellant took the bag to the room and also that as no facts were proved from which it would be safe to infer that appellant took the bag to the room, he should be given the benefit of the doubt.

MAGISTRATE'S CRIMINAL APPEAL.

*Lim Kheng Kooi* for the appellant.

*T. R. Hepworth* (Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Pretheroe J.** : — In this case the appellant had been convicted on three charges of carrying on a public lottery.

Briefly stated the facts were as follows. The appellant went to the Rex Hotel in Ipoh and was allocated room No. 1. Between the occupation of the room by appellant and its vacation by the previous occupant it had been swept and tidied and the person who performed these tasks gave evidence to the effect that there was no paper bag in the room when he left it. Later, appellant left the room and proceeded to the lavatory and then to a telephone. While he was so engaged two acquaintances arrived and, as the door was not locked, they entered the room. Soon afterwards appellant returned to the room and almost immediately the Police, acting on information received, appeared and searched it. They found appellant sitting at a table and on the floor near the table was a paper bag. That bag contained a number of slips of paper which were undoubtedly betting slips.

When the appeal was argued Mr. Lim Kheng Kooi elaborated one point only, viz. that in the particular circumstances of this case there was no more evidence against the appellant than against the other two occupants of the room.

I reserved judgment and have since considered the evidence very carefully. I have come to the conclusion that the two factors which influenced the Magistrate were that appellant was the registered occupier of the room and that he appears to have been the nearest of the three persons to the paper bag.

The appellant and the other two persons in the room at the time of the raid all gave evidence and all stated that they were entirely ignorant of the presence of the bag. This may well be doubted. But there appears to be no evidence to disprove that one of the two persons, and not the appellant, took the bag to the room. Likewise, as I read the evidence, no facts were proved from which it would be safe to infer that appellant took the bag to the room. In my opinion it is a case in which a reasonable jury would have given accused the benefit of the doubt. For this reason I think the submission made by Counsel is a good one. Consequently, I allow the appeal and set aside the three convictions. If the fine has been paid it will be refunded.

*Appeal allowed.*

Solicitor for the appellant: *Lim Kheng Kooi.*